

(ii) All of the members of the entity are related by blood or marriage; and

(iii) All of the members are or will become operators of the family farm; and

(4) If the entity applicant has an operator and ownership interest for farm ownership loans and emergency loans for farm ownership loan purposes, in any other farming operation, that farming operation must not exceed the requirements of a family farm.

(1) *Entity composition.* If the applicant is an entity, the entity members are not themselves entities.

§ 764.102 General limitations.

(a) Limitations specific to each loan program are contained in subparts D through H of this part.

(b) The total principal balance owed to the Agency at any one time by the applicant, or any one who will sign the promissory note, cannot exceed the limits established in § 761.8 of this chapter.

(c) The funds from the FLP loan must be used for farming operations located in the United States.

(d) The Agency will not make a loan if the proceeds will be used:

(1) For any purpose that contributes to excessive erosion of highly erodible land, or to the conversion of wetlands;

(2) To drain, dredge, fill, level, or otherwise manipulate a wetland; or

(3) To engage in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands as defined in the Food Security Act of 1985.

(e) Any construction financed by the Agency must comply with the standards established in § 761.10 of this chapter.

(f) Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm.

§ 764.103 General security requirements.

(a) Security requirements specific to each loan program are outlined in subparts D through H of this part.

(b) All loans must be secured by assets having a security value of at least

100 percent of the loan amount, except for EM loans as provided in subpart H of this part. If the applicant's assets do not provide adequate security, the Agency may accept:

(1) A pledge of security from a third party; or

(2) Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties).

(c) An additional amount of security up to 150 percent of the loan amount will be taken when available, except for downpayment loans and youth loans.

(d) The Agency will choose the best security available when there are several alternatives that meet the Agency's security requirements.

(e) The Agency will take a lien on all assets that are not essential to the farming operation and are not being converted to cash to reduce the loan amount when each such asset, or aggregate value of like assets (such as stocks), has a value in excess of \$5,000. The value of this security is not included in the Agency's additional security requirement stated in paragraph (c) of this section. This requirement does not apply to downpayment loans and youth loans.

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§ 764.104 General real estate security requirements.

(a) *Agency lien position requirements.* If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available. When a first lien is not available, the Agency may take a junior lien under the following conditions:

(1) The prior lien does not contain any provisions that may jeopardize the Agency's interest or the applicant's ability to repay the FLP loan;

(2) Prior lienholders agree to notify the Agency prior to foreclosure;

(3) The applicant must agree not to increase an existing prior lien without the written consent of the Agency; and

(4) Equity in the collateral exists.

(b) *Real estate held under a purchase contract.* If the real estate offered as security is held under a recorded purchase contract:

(1) The applicant must provide a security interest in the real estate;

(2) The applicant and the purchase contract holder must agree in writing that any insurance proceeds received for real estate losses will be used only for one or more of the following purposes:

(i) To replace or repair the damaged real estate improvements which are essential to the farming operation;

(ii) To make other essential real estate improvements; or

(iii) To pay any prior real estate lien, including the purchase contract.

(3) The purchase contract must provide the applicant with possession, control and beneficial use of the property, and entitle the applicant to marketable title upon fulfillment of the contract terms.

(4) The purchase contract must not:

(i) Be subject to summary cancellation upon default;

(ii) Contain provisions which jeopardize the Agency's security position or the applicant's ability to repay the loan.

(5) The purchase contract holder must agree in writing to:

(i) Not sell or voluntarily transfer their interest without prior written consent of the Agency;

(ii) Not encumber or cause any liens to be levied against the property;

(iii) Not take any action to accelerate, forfeit, or foreclose the applicant's interest in the security property until a specified period of time after notifying the Agency of the intent to do so;

(iv) Consent to the Agency making the loan and taking a security interest in the applicant's interest under the purchase contract as security for the FLP loan;

(v) Not take any action to foreclose or forfeit the interest of the applicant under the purchase contract because the Agency has acquired the applicant's interest by foreclosure or voluntary conveyance, or because the Agency has subsequently sold or assigned the applicant's interest to a third party who will assume the appli-

cant's obligations under the purchase contract;

(vi) Notify the Agency in writing of any breach by the applicant; and

(vii) Give the Agency the option to rectify the conditions that amount to a breach within 30 days after the date the Agency receives written notice of the breach.

(6) If the Agency acquires the applicant's interest under the purchase contract by foreclosure or voluntary conveyance, the Agency will not be deemed to have assumed any of the applicant's obligations under the contract, provided that if the Agency fails to perform the applicant's obligations while it holds the applicant's interest is grounds for terminating the purchase contract.

(c) *Tribal lands held in trust or restricted.* The Agency may take a lien on Indian Trust lands as security provided the applicant requests the Bureau of Indian Affairs to furnish Title Status Reports to the agency and the Bureau of Indian Affairs provides the reports and approves the lien.

(d) *Security for more than one loan.* The same real estate may be pledged as security for more than one direct or guaranteed loan.

(e) *Loans secured by leaseholds.* A loan may be secured by a mortgage on a leasehold, if the leasehold has negotiable value and can be mortgaged.

§ 764.105 General chattel security requirements.

The same chattel may be pledged as security for more than one direct or guaranteed loan.

§ 764.106 Exceptions to security requirements.

Notwithstanding any other provision of this part, the Agency will not take a security interest:

(a) When adequate security is otherwise available and the lien will prevent the applicant from obtaining credit from other sources;

(b) When the property could have significant environmental problems or costs as described in subpart G of 7 CFR part 1940;

(c) When the Agency cannot obtain a valid lien;